

SENATE BILL REPORT

SHB 1840

As Reported by Senate Committee On:
Law & Justice, April 2, 2013

Title: An act relating to firearms laws concerning persons subject to no-contact orders, protection orders, and restraining orders.

Brief Description: Concerning firearms laws for persons subject to no-contact orders, protection orders, and restraining orders.

Sponsors: House Committee on Judiciary (originally sponsored by Representatives Goodman, Hope, Hunter, Pedersen, Bergquist, Habib, Fey, Ryu, Jinkins, Pollet and Tharinger).

Brief History: Passed House: 3/12/13, 61-37.

Committee Activity: Law & Justice: 3/25/13, 4/02/13 [DPA, w/oRec].

SENATE COMMITTEE ON LAW & JUSTICE

Majority Report: Do pass as amended.

Signed by Senators Padden, Chair; Kline, Ranking Member; Darneille, Kohl-Welles and Pearson.

Minority Report: That it be referred without recommendation.

Signed by Senator Roach.

Staff: Aldo Melchiori (786-7439)

Background: There are a number of civil protection orders a court may impose to restrict a person's ability to have contact with another person. A court may enter an ex parte temporary protection order and, upon a full hearing, a final order that lasts for a fixed term or, in some cases, permanently. Additionally, courts may issue no-contact orders to protect victims during the pendency of criminal proceedings, and these orders may also be imposed or extended as a condition of release or sentence. A court may impose a restraining order in a variety of contexts, but they are commonly entered in family law proceedings to keep the parties from coming into contact with one another or to prevent removal of or injury to a child.

Sexual assault protection orders are available to victims of nonconsensual sexual conduct or penetration that gives rise to a reasonable fear of future dangerous acts. These orders provide

This analysis was prepared by non-partisan legislative staff for the use of legislative members in their deliberations. This analysis is not a part of the legislation nor does it constitute a statement of legislative intent.

a remedy for victims of sexual assault who do not qualify for a domestic violence protection order.

Unlawful Possession of a Firearm. State Law. A person is guilty of Unlawful Possession of a Firearm in the first degree if the person owns, possesses, or has control of any firearm after being previously convicted of a serious offense. A serious offense includes, among other things, any crime of violence, various class B felonies, any felony with a deadly weapon verdict, and certain vehicular-related crimes when committed while under the influence of alcohol or drugs, or while driving recklessly. Unlawful Possession of a Firearm in the first degree is a class B felony.

A person is guilty of Unlawful Possession of a Firearm in the second degree, a class C felony, if the person owns, possesses, or has control of any firearm and the person:

- was previously convicted of any felony (other than a serious offense);
- was previously convicted of certain specified gross misdemeanors committed by one family or household member against another;
- was previously involuntarily committed for mental health treatment;
- is under the age of 18 – with some exceptions; or
- is free on bond or personal recognizance pending trial, appeal, or sentencing for a serious offense.

Federal Law. Certain categories of people are disqualified from possessing firearms under federal law, including persons who were convicted of a domestic violence offense and persons subject to certain restraining orders. The order must have been issued after notice and an opportunity for the person to be heard and must restrain the person from harassing, stalking, or threatening an intimate partner or the child of an intimate partner, and include either: (1) a finding that the restrained person is a credible threat to the physical safety of an intimate partner or the child of an intimate partner; or (2) terms restraining the person from committing certain criminal acts against an intimate partner or the child of an intimate partner.

A person subject to a protection order, no-contact order, or restraining order may, under some circumstances, be required to surrender their firearms, dangerous weapons, and concealed pistol license while the order is in place. In entering most orders, if the person to be restrained used or threatened to use a firearm in the commission of a felony, or is otherwise disqualified from having a firearm, the court either may or must require the person to surrender their firearms, dangerous weapons, and concealed pistol license, depending on the evidence presented.

Summary of Bill (Recommended Amendments): Sexual assault protection orders are included in the provisions of current law that require firearms, dangerous weapons, and concealed pistol licenses to be surrendered by parties restrained under certain orders.

Additional restrictions on the ability to possess a firearm, dangerous weapon, or concealed pistol license are placed on persons, restraining them from harassing, stalking, threatening or other conduct that would place an intimate partner in reasonable fear of bodily injury in violation of protection, no-contact, and restraining orders. The restrictions only apply when the order was issued after notice and an opportunity to be heard. Additionally, the order must

include a finding that the restrained person is a credible threat to the physical safety of an intimate partner or an intimate partner's child and, by its terms, restrain the person from committing certain criminal acts against an intimate partner or the child of an intimate partner. An intimate partner includes a current or former spouse or domestic partner, a person with whom the restrained person has a child in common, or a person with whom the restrained person cohabitated or is cohabitating as part of a dating relationship.

Possession of a firearm while subject to a qualifying protection, no-contact, or restraining order constitutes Unlawful Possession of a Firearm in the second degree. When entering a qualifying order the court must:

- require the respondent to surrender any firearm or other dangerous weapon;
- prohibit the respondent from obtaining or possessing a firearm or other dangerous weapon;
- require the party to surrender their concealed pistol license; and
- prohibit the party from obtaining or possessing a concealed pistol license.

The Administrative Office of the Courts must develop pattern forms for use in documenting a restrained person's compliance with an order to surrender firearms, dangerous weapons, and the person's concealed pistol license. When surrender of these items is ordered, the restrained person must file the appropriate form with the court within five judicial days. All law enforcement agencies must develop policies and procedures regarding acceptance, storage, and return of weapons required to be surrendered.

EFFECT OF CHANGES MADE BY LAW & JUSTICE COMMITTEE (Recommended Amendments): Language is amended to conform to that in federal law and include Washington statutory references, except the court must find both that the person represents a credible threat to the physical safety of the intimate partner or child; and – rather than or – that by its terms explicitly prohibits the use, attempted use, or threatened use of physical force against the intimate partner or child that would reasonably be expected to cause bodily injury.

Appropriation: None.

Fiscal Note: Available.

Committee/Commission/Task Force Created: No.

Effective Date: Ninety days after adjournment of session in which the bill is passed, except for section 5 relating to filing of forms documenting compliance with an order, which takes effect December 1, 2013.

Staff Summary of Public Testimony on Substitute House Bill: PRO: The bill addresses a dangerous window of time before conviction when the person may present a credible threat. We are one of only a few states that do not provide this protection. We further narrowed the bill to account for the greater protections provided by the Washington State Constitution. This will give greater protection to victims of violence. We take guns away from property offense felons and victims of violence should be afforded the same safeguards. Washington should keep its tradition of protecting its citizens from violent crime. Only one in five people

who ask for protection orders actually obtain one. When victims take the dangerous step of leaving their abusers, they deserve this greater protection. It makes sense to remove weapons from potentially dangerous situations. The bill provides the necessary due process protections for firearms owners.

OTHER: The striking amendment addresses the National Rifle Association concerns. The person must get notice of the order request and an opportunity to be heard. The order for surrender of a firearm is only appropriate if the person constitutes a credible threat.

Persons Testifying: PRO: Representative Goodman, prime sponsor; Sandra Shanahan, King County Prosecuting Attorney's Office; Courtney Weaver, Jo Marr, citizens; Grace Huang, WA State Coalition Against Domestic Violence; Don Pierce, WA Sheriff's and Police Chiefs Assn.; Mark Hanna King County Sheriffs Office; John Lane, Governor's Office.

OTHER: Brian Judy, National Rifle Assn.